

111TH CONGRESS  
2D SESSION

# H. R. 6167

To amend title 46, United States Code, to require the Federal Maritime Commission to maintain an Office of Dispute Resolution and Customer Advocate, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2010

Mr. OBERSTAR (for himself and Mr. CUMMINGS) introduced the following bill;  
which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend title 46, United States Code, to require the Federal Maritime Commission to maintain an Office of Dispute Resolution and Customer Advocate, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Shipping Act of 2010”.

5 **SEC. 2. REFERENCES.**

6 Except as otherwise expressly provided, whenever in  
7 this Act an amendment or repeal is expressed in terms  
8 of an amendment to, or repeal of, a section or other provi-

1 sion, the reference shall be considered to be made to a  
 2 section or other provision of title 46, United States Code.

3 **SEC. 3. OFFICE OF DISPUTE RESOLUTION AND CUSTOMER**  
 4 **ADVOCATE.**

5 (a) IN GENERAL.—Chapter 3 is amended by adding  
 6 at the end the following new section:

7 **“§ 308. Office of Dispute Resolution and Customer**  
 8 **Advocate**

9 “(a) IN GENERAL.—(1) The Commission shall main-  
 10 tain an Office of Dispute Resolution and Customer Advo-  
 11 cate that shall—

12 “(A) mediate disputes between persons subject  
 13 to the Commission’s jurisdiction;

14 “(B) facilitate communication among persons  
 15 subject to the Commission’s jurisdiction and their  
 16 customers; and

17 “(C) carry out other duties and powers pre-  
 18 scribed by the Commission.

19 “(2) The confidentiality and neutrality provisions of  
 20 the subchapter IV of chapter 5, United States Code, shall  
 21 apply to those mediation and facilitation services.

22 “(b) OMBUDSMAN.—The Chairman may designate an  
 23 employee of the Commission to serve as an ombudsman  
 24 of the Commission in matters of Commission interest, in-  
 25 cluding matters related to ocean transportation, mergers

1 and acquisitions, or any other matter designated by the  
2 Commission.”.

3 (b) CONFORMING AMENDMENT.—The analysis at the  
4 beginning of such chapter is amended by adding at the  
5 end the following new item:

“308. Office of Dispute Resolution and Customer Advocate.”.

6 **SEC. 4. OCEAN SHIPPING ADVISORY COMMITTEE.**

7 (a) IN GENERAL.—Chapter 3 is further amended by  
8 adding at the end the following new section:

9 **“§ 309. Ocean Shipping Advisory Committee**

10 “(a) IN GENERAL.—The Commission shall establish  
11 an Ocean Shipping Advisory Committee. The Com-  
12 mittee—

13 “(1) may review proposed ocean shipping regu-  
14 lations and policies of the Commission and make  
15 recommendations to the Commission that the Com-  
16 mittee considers appropriate;

17 “(2) may advise, consult with, report to, and,  
18 upon approval by at least all but one of the members  
19 then serving on the Committee, make recommenda-  
20 tions to the Commission on matters relating to  
21 ocean shipping transportation by persons subject to  
22 this subtitle;

23 “(3) may make available to Congress rec-  
24 ommendations that the Committee makes to the  
25 Commission;

1 “(4) shall meet at the call of—

2 “(A) the Chairman of the Commission, in  
3 consultation with the other Commissioners, who  
4 shall call such a meeting at least once during  
5 each calendar year; or

6 “(B) a majority of the Committee; and

7 “(5) shall not intervene in or seek to influence  
8 formal or informal adjudicatory or dispute resolution  
9 proceedings before the Commission.

10 “(b) MEMBERSHIP.—

11 “(1) IN GENERAL.—The Committee shall con-  
12 sist of 18 members appointed by the Commission in  
13 accordance with this subsection, each of whom has  
14 at least 5 years practical experience in their respec-  
15 tive ocean shipping operations. The term of each  
16 member shall be 5 years. Before filling a position on  
17 the Committee, the Commission shall publish a no-  
18 tice in the Federal Register soliciting nominations  
19 for membership on the Committee.

20 “(2) REPRESENTATIVES.—The membership of  
21 the Committee shall include—

22 “(A) 6 representatives of ocean common  
23 carriers with representation to include those  
24 serving the east, west, gulf and Great Lakes  
25 coasts of the United States;

1           “(B) 3 representatives of nonvessel-oper-  
2           ating common carriers;

3           “(C) 3 representatives of ocean freight for-  
4           warders;

5           “(D) 3 representatives of shippers that im-  
6           port goods into the United States, at least one  
7           of which must represent small shippers; and

8           “(E) 3 representatives of shippers that ex-  
9           port goods from the United States, at least one  
10          of which must represent small shippers.

11       “(c) CHAIRMAN AND VICE CHAIRMAN.—

12           “(1) IN GENERAL.—The Committee shall elect  
13           one of its members as the Chairman and one of its  
14           members as the Vice Chairman. The Vice Chairman  
15           shall act as Chairman in the absence or incapacity  
16           of the Chairman, or in the event of a vacancy in the  
17           office of the Chairman.

18           “(2) DESIGNATION OF OBSERVER.—The Chair-  
19           man of the Commission shall designate a representa-  
20           tive to participate as an observer with the Com-  
21           mittee. The individual so designated shall act as the  
22           executive secretary of the Committee and shall per-  
23           form the duties set forth in section 10(c) of the Fed-  
24           eral Advisory Committee Act (5 U.S.C. App.).

1       “(d) CONSIDERATION OF INFORMATION, ADVICE,  
2 AND RECOMMENDATIONS.—The Commission shall con-  
3 sider the information, advice, and recommendations of the  
4 Committee in formulating policy regarding matters affect-  
5 ing ocean commerce.

6       “(e) COMPENSATION AND EXPENSES.—

7               “(1) IN GENERAL.—A member of the Com-  
8 mittee, when attending meetings of the Committee  
9 or when otherwise engaged in the business of the  
10 Committee, may receive—

11                       “(A) compensation at a rate fixed by the  
12 Chairman of the Commission, not exceeding the  
13 daily equivalent of the then current rate of  
14 basic pay in effect for Level 18 of the General  
15 Schedule under section 5332 of title 5, includ-  
16 ing for travel time; and

17                       “(B) travel or transportation expenses  
18 under section 5703 of title 5.

19               “(2) NOT AN OFFICER OR EMPLOYEE.—A mem-  
20 ber of the Committee shall not be considered to be  
21 an officer or employee of the United States for any  
22 purpose based on their receipt of any payment under  
23 this subsection.

24       “(f) TERMINATION.—

1 “(1) IN GENERAL.—Notwithstanding any provi-  
 2 sion of the Federal Advisory Committee Act (5  
 3 U.S.C. App.), the Committee terminates on Sep-  
 4 tember 30, 2015.

5 “(2) RECOMMENDATION REGARDING.—Two  
 6 years before the termination date under paragraph  
 7 (1), the Committee shall submit to Congress its rec-  
 8 ommendation regarding whether the Committee  
 9 should be renewed and continued beyond the termi-  
 10 nation date.”.

11 (b) CONFORMING AMENDMENT.—The analysis at the  
 12 beginning of such chapter is amended by adding at the  
 13 end the following new item:

“309. Ocean Shipping Advisory Committee.”.

14 **SEC. 5. PURPOSES OF REGULATION OF OCEAN SHIPPING.**

15 Section 40101(3) is amended to read as follows:

16 “(3) to allow, to the maximum extent possible,  
 17 competition and the demand for services to deter-  
 18 mine fair and efficient market rates and charges for  
 19 transportation by common carriers; and”.

20 **SEC. 6. AMENDMENTS TO DEFINITIONS FOR PART.**

21 (a) IN GENERAL.—Section 40102 is amended—

22 (1) by striking paragraph (7);

23 (2) by redesignating paragraphs (5) and (6) as  
 24 paragraphs (6) and (7), respectively;

1           (3) by redesignating paragraphs (10) through  
2           (22) as paragraphs (12) through (24), respectively;  
3           (4) by redesignating paragraphs (23) through  
4           (25) as paragraphs (26) through (28), respectively;  
5           (5) by inserting after paragraph (4) the fol-  
6           lowing:

7           “(5) CAPACITY RATIONALIZATION.—The term  
8           ‘capacity rationalization’ means a concerted reduc-  
9           tion, stabilization, withholding, or other limitation in  
10          any manner by ocean common carriers on the size  
11          or number of vessels or available space offered col-  
12          lectively or individually to shippers in any trade or  
13          service.”;

14          (6) by striking “ocean” in paragraph (8);

15          (7) by inserting after paragraph (9) the fol-  
16          lowing:

17          “(10) EFFICIENCY AND SERVICE-ENHANCING  
18          AGREEMENT.—The term ‘efficiency and service-en-  
19          hancing agreement’ means an agreement between  
20          ocean common carriers that—

21                 “(A) is likely to produce cognizable effi-  
22                 ciencies and improves the service and reliability  
23                 that would be offered individually by each of its  
24                 members in the absence of such agreement,



1 while maintaining adequate competition in a  
2 trade or service; and

3 “(B) gives members of the agreement the  
4 right to withdraw from the agreement without  
5 financial or other penalty.

6 “(11) EQUIPMENT PROVIDER.—The term  
7 ‘equipment provider’ means a person in the United  
8 States that rents or leases marine cargo containers,  
9 or chassis for marine cargo containers, to shippers  
10 or common carriers for use in or related to transpor-  
11 tation by water of cargo between the United States  
12 and a foreign country.”;

13 (8) by amending paragraph (22), as so redesign-  
14 nated, to read as follows:

15 “(22) SERVICE CONTRACT.—The term ‘service  
16 contract’ means a written contract, other than a bill  
17 of lading or receipt, between one or more shippers  
18 and a common carrier, in which—

19 “(A) the shipper or shippers commit to  
20 providing a certain volume or portion of cargo  
21 over a fixed time period; and

22 “(B) the common carrier commits to a cer-  
23 tain rate or rate schedule and a defined service  
24 level that includes assured space and other serv-  
25 ice features.”; and

1 (9) by inserting after paragraph (24), as so re-  
 2 designated, the following:

3 “(25) SURCHARGE.—The term ‘surcharge’  
 4 means an amount charged by a common carrier re-  
 5 lated directly to a particular expense or cost in-  
 6 curred by the common carrier that is not included  
 7 in the basic freight rate.”.

8 (b) CONFORMING AMENDMENT.—Section 431A(b)(1)  
 9 of the Tariff Act of 1930 (19 U.S.C. Sec. 1431a(b)(1))  
 10 is amended by striking “section 40102(16)” and inserting  
 11 “section 40102(18)”.

12 **SEC. 7. ADMINISTRATIVE EXEMPTIONS.**

13 Section 40103(a) is amended by striking “agree-  
 14 ments” and all that follows through “from any require-  
 15 ment” and inserting “agreements subject to this part or  
 16 any specified activity of persons subject to this part from  
 17 any requirement”.

18 **SEC. 8. TREATMENT OF CERTAIN COMMISSION ORDERS AS**  
 19 **INVESTIGATIVE ORDERS.**

20 Section 40104(b) is amended to read as follows:

21 “(b) TREATMENT OF CERTAIN COMMISSION ORDERS  
 22 AS INVESTIGATIVE ORDERS.—A Commission order requir-  
 23 ing a report, account, record, rate, charge, or memo-  
 24 randum pursuant to subsection (a) constitutes an inves-  
 25 tigative order to specific individuals or entities rather than

1 a collection of information from a category or class of indi-  
 2 viduals or entities.”.

3 **SEC. 9. APPLICATION OF LAWS REGULATING OCEAN SHIP-**  
 4 **PING.**

5 Section 40301 is amended as follows:

6 (1) By amending subsection (a) to read as fol-  
 7 lows:

8 “(a) OCEAN COMMON CARRIER AGREEMENTS.—This  
 9 part applies to an efficiency and service-enhancing agree-  
 10 ment between or among ocean common carriers to—

11 “(1) share vessels or space on voyages between  
 12 ports;

13 “(2) discuss the number and character of voy-  
 14 ages between those ports; and

15 “(3) engage in an exclusive, preferential, or co-  
 16 operative working arrangement between themselves  
 17 or with a marine terminal operator.”.

18 (2) In subsection (c) by inserting before the pe-  
 19 riod the following: “that does not result in a change  
 20 of control of an ocean common carrier”.

21 **SEC. 10. RESTRICTIONS ON OCEAN COMMON CARRIER**  
 22 **AGREEMENTS.**

23 (a) IN GENERAL.—Section 40303 is amended as fol-  
 24 lows:

1           (1) By striking so much as precedes subsection  
2           (d) and inserting the following:

3           “(a) OCEAN COMMON CARRIER AGREEMENTS.—An  
4           agreement between or among ocean common carriers may  
5           not—

6                   “(1) allow members of the agreement to dis-  
7           cuss, fix, or negotiate any kind of rate or charge  
8           with another member of the agreement;

9                   “(2) allow members of the agreement to discuss  
10          or agree on capacity rationalization;

11                  “(3) allow members of the agreement to estab-  
12          lish a joint service, or pool or divide cargo traffic,  
13          earnings, revenues, or losses;

14                  “(4) allow all members of the agreement to allo-  
15          cate customers or markets;

16                  “(5) allow members of the agreement to discuss  
17          or agree with another member on any service con-  
18          tract matter;

19                  “(6) prohibit or restrict a member of the agree-  
20          ment from engaging in negotiations for a service  
21          contract with a shipper; or

22                  “(7) require a member of the agreement to dis-  
23          close a negotiation on a service contract, or the  
24          terms of a service contract, other than those terms

1 required to be published under section 40502(d) of  
2 this title.”.

3 (2) By redesignating subsection (d) as sub-  
4 section (b).

5 (b) CONFORMING AMENDMENT.—Section  
6 41105(6)(A) is amended by striking “40303(d)” and in-  
7 serting “40303(b)”.

8 **SEC. 11. COMMISSION ACTION.**

9 Section 40304 is amended—

10 (1) in subsection (b), by inserting “is not an ef-  
11 ficiency and service-enhancing agreement or” after  
12 “finds”;

13 (2) in subsection (c)—

14 (A) in the matter preceding paragraph (1),  
15 by inserting “or an ocean common carrier  
16 agreement” after “assessment agreement”; and

17 (B) in paragraph (2) by striking “(d)” and  
18 inserting “(e)”;

19 (3) by redesigning subsections (d) through (f)  
20 as subsection (e) through (g), respectively;

21 (4) by inserting after subsection (c) the fol-  
22 lowing new subsection:

23 “(d) APPROVAL BY COMMISSION.—

24 “(1) IN GENERAL.—An ocean common carrier  
25 agreement filed under this part is not effective until

1 it is approved by the Commission as meeting the re-  
 2 quirements of this part.

3 “(2) DEADLINE FOR APPROVAL.—Except as  
 4 provided in subsection (e), the Commission shall vote  
 5 on whether or not to approve an agreement before  
 6 the later of—

7 “(A) the end of the 90-day period begin-  
 8 ning on the date it is filed; or

9 “(B) if additional information or docu-  
 10 ments are requested under subsection (e), the  
 11 end of the 90-day period beginning on the date  
 12 the Commission receives all the additional infor-  
 13 mation and documents.”;

14 (5) in subsection (e), as so redesignated, by in-  
 15 serting “or (d)” after “subsection (c)(1)”;

16 (6) in subsection (f)(2), as so redesignated—

17 (A) by inserting before the first sentence  
 18 the following:

19 “(A) IN GENERAL.—”; and

20 (B) by adding at the end the following new  
 21 subparagraph:

22 “(B) EXTENSIONS.—If a person filing an  
 23 agreement, or an officer, director, agent, or em-  
 24 ployee of that person, fails to substantially com-  
 25 ply with a request for the submission of addi-

1           tional information or documents within the pe-  
 2           riod provided in subsection (d), the Commission  
 3           may extend such period until there has been  
 4           substantial compliance with the request of the  
 5           Commission under subsection (e).”; and

6           (7) in subsection (g), as so redesignated, by in-  
 7           serting before the period the following: “, except for  
 8           an agreement approved under subsection (d)”.

9   **SEC. 12. EXEMPTION.**

10       Section 40307 is amended—

11           (1) in subsection (a)(7), by inserting before the  
 12           period the following: “to the extent that such an  
 13           agreement is approved under this part after January  
 14           1, 2011”; and

15           (2) in subsection (d), by striking “by this part”  
 16           and inserting “by section 41106”.

17   **SEC. 13. GENERAL RATE AND TARIFF REQUIREMENTS.**

18       Section 40501 is amended—

19           (1) in subsection (a)(1), by striking “Each”  
 20           and all that follows through “system,” and inserting  
 21           “Each common carrier shall maintain for public in-  
 22           spection in an automated tariff system on the Inter-  
 23           net,”;

24           (2) in subsection (b)—

1 (A) in paragraphs (3) and (4), by striking  
2 “or conference” each place it appears; and

3 (B) by striking “and” after the semicolon  
4 at the end of paragraph (5), by striking the pe-  
5 riod at the end of paragraph (6) and inserting  
6 a semicolon, and by adding at the end the fol-  
7 lowing new paragraphs:

8 “(7) separately state the charges by the carrier  
9 for providing or handling equipment; and

10 “(8) clearly describe any surcharge contained in  
11 the tariff.”;

12 (3) in subsection (c), by striking the last sen-  
13 tence and inserting the following: “No fee may be  
14 charged for such access.”; and

15 (4) in subsection (e)(2), by striking “on publi-  
16 cation” and inserting “immediately”.

17 **SEC. 14. SERVICE CONTRACTS.**

18 Section 40502 is amended—

19 (1) in subsection (a), by striking “ocean com-  
20 mon carrier or an agreement between or among  
21 ocean common carriers” and inserting “common car-  
22 rier”;

23 (2) in subsection (b)(2), by striking “ocean  
24 common carrier or an agreement shall be filed” and



1 inserting “common carrier shall be filed electroni-  
2 cally and”;

3 (3) in subsection (c)—

4 (A) in paragraph (7), by striking “and”  
5 after the semicolon at the end;

6 (B) in paragraph (8), by striking the pe-  
7 riod at the end and inserting “, by common car-  
8 rier and shipper parties.”; and

9 (C) by adding at the end the following new  
10 paragraph:

11 “(9) separately state the charges by the carrier  
12 for providing equipment.”;

13 (4) in subsection (d), by striking “and (6)” and  
14 inserting “, (6), and (9)”;

15 (5) in subsection (f)—

16 (A) in the first sentence, by striking “ex-  
17 clusive”; and

18 (B) by adding at the end the following:

19 “This subsection does not apply to mediation  
20 before the Commission at the request of any  
21 party to the service contract or to a dispute  
22 covered by section 40505(b) of this title.”.

23 **SEC. 15. REFUNDS AND WAIVERS.**

24 Section 40503 is amended by striking “or con-  
25 ference” each place it appears.

1 **SEC. 16. COMPILATION OF COMPLAINTS AND SERVICE RE-**  
2 **LIABILITY DATA.**

3 (a) IN GENERAL.—Chapter 405 is amended by add-  
4 ing at the end the following new section:

5 **“§ 40504. Compilation of complaints and service reli-**  
6 **ability data**

7 “(a) DATABASE.—The Commission shall establish  
8 and maintain a database of complaints received by the  
9 Commission.

10 “(b) AN ANNUAL REPORT OF SERVICE COM-  
11 PLAINTS.—

12 “(1) IN GENERAL.—The Commission shall post  
13 an annual report of formal and informal service  
14 complaints received by the Commission during the  
15 previous year that shall include—

16 “(A) the quantity of each type of com-  
17 plaint;

18 “(B) the geographic region of the com-  
19 plaints; and

20 “(C) the resolution of the complaints, if  
21 appropriate.

22 “(2) LIMITATION ON IDENTIFICATION OF COM-  
23 PLAINTANT.—The annual report may identify a com-  
24 plainant that submitted an informal complaint only  
25 upon the written consent of the complainant.

26 “(c) RELIABILITY INDICATORS.—

1           “(1) IN GENERAL.—The Commission shall, by  
 2           regulation, require ocean common carriers to report  
 3           frequency and duration of delays in shipments, all  
 4           instances in which cargo has not been transported  
 5           on a voyage for which it was booked, and other serv-  
 6           ice or reliability indicators as determined by the  
 7           Commission to be appropriate.

8           “(2) ANNUAL REPORT.—

9                   “(A) IN GENERAL.—The Commission shall  
 10           issue an annual report of service and reliability  
 11           indicators for each ocean common carrier.

12                   “(B) POSTING ON INTERNET.—The re-  
 13           ports shall be posted on the Commission’s pub-  
 14           lic Internet Web site.”.

15           (b) CLERICAL AMENDMENT.—The analysis at the be-  
 16           ginning of such chapter is amended by adding at the end  
 17           the following new item:

          “40504. Compilation of complaints and service reliability data.”.

## 18   **SEC. 17. ARBITRATION OF DISPUTES.**

19           (a) IN GENERAL.—Chapter 405 is further amended  
 20           by adding at the end the following new section:

### 21   **“§ 40505. Arbitration of disputes regarding common** 22                   **carrier services**

23                   “(a) IN GENERAL.—Not later than one year after en-  
 24           actment of the Ocean Shipping Act of 2010, the Commis-  
 25           sion shall prescribe regulations to establish a binding arbi-

1 tration process to resolve complaints subject to the juris-  
 2 diction of the Commission and within the scope of disputes  
 3 to which the process applies under subsection (b).

4 “(b) COVERED DISPUTES.—The binding arbitration  
 5 process—

6 “(1) shall apply to disputes involving service  
 7 contracts, common carrier practices, and common  
 8 carrier service expectations that are subject to the  
 9 jurisdiction of the Commission;

10 “(2) shall not apply to disputes to obtain the  
 11 grant, denial, stay, or revocation of any license, au-  
 12 thorization, or exemption;

13 “(3) shall not apply to disputes solely between  
 14 2 or more ocean common carriers; and

15 “(4) shall be agreed upon by the parties to dis-  
 16 pute.

17 “(c) ARBITRATION PROCEDURES.—

18 “(1) IN GENERAL.—The Commission—

19 “(A) may make the binding arbitration  
 20 process available only to the relevant parties—

21 “(i) after the filing of a formal com-  
 22 plaint; or

23 “(ii) on petition by a party at the con-  
 24 clusion of any informal dispute resolution

1 process provided by the Commission for a  
2 complaint subject to this section;

3 “(B) shall determine whether to pursue a  
4 proceeding under the binding arbitration proc-  
5 ess no later than 30 days after the filing of a  
6 petition or formal complaint; and

7 “(C) may make the binding arbitration  
8 proceeding and decision confidential following a  
9 request of the parties submitted at the time of  
10 filing the petition or formal complaint.

11 “(2) PROHIBITION ON SEPARATE REVIEW.—  
12 The Commission may not separately review a com-  
13 plaint or dispute related to a rate, practice, or com-  
14 mon carrier service that is the subject of a binding  
15 arbitration initiated under this subsection involving  
16 the same parties.

17 “(3) CONSIDERATION OF PUBLISHED SERVICE  
18 EXPECTATIONS.—In resolving disputes involving  
19 common carrier service expectations, the arbitrator  
20 shall consider service expectations as published  
21 under section 40501(h) of this title.

22 “(d) ARBITRATION DECISIONS.—Any decision  
23 reached in an arbitration proceeding under this section  
24 shall—

25 “(1) be consistent with this part;

1           “(2) be in writing and contain findings of fact  
2           and conclusions;

3           “(3) have no precedential effect in any other or  
4           subsequent arbitration proceeding under this section;  
5           and

6           “(4) be binding upon the parties.

7           “(e) TIMELINES.—

8           “(1) IN GENERAL.—In an arbitration pro-  
9           ceeding under this section—

10           “(A) the arbitrator shall be selected within  
11           14 days after the Commission’s decision to ini-  
12           tiate arbitration;

13           “(B) the evidentiary phase of the arbitra-  
14           tion shall be completed within 90 days after the  
15           date of initiation of the arbitration proceeding,  
16           unless a party requests an extension and the ar-  
17           bitrator grants it; and

18           “(C) the arbitrator shall issue a decision  
19           within 30 days after the close of the evidentiary  
20           record.

21           “(2) EXTENSION OF DEADLINES.—The Com-  
22           mission may extend any of the deadlines in this sub-  
23           section.

24           “(f) ARBITRATORS.—Arbitration under this section  
25           shall be conducted by an arbitrator selected from a roster,

1 maintained by the Commission, of Commission staff or  
2 persons in the private sector with transportation, economic  
3 regulation, professional or business experience, including  
4 agriculture. If the parties cannot mutually agree on an  
5 arbitrator, the parties shall select an arbitrator from the  
6 roster by alternately striking names from the roster until  
7 only 1 name remains. The parties shall share the costs  
8 of the arbitration equally. With respect to arbitration in-  
9 volving a controlled carrier, the arbitrator may not be con-  
10 trolled by or in any way affiliated with a government that  
11 owns or controls the carrier.

12 “(g) RELIEF.—

13 “(1) LIMITATION.—A decision under this sec-  
14 tion may award the payment of damages, but the  
15 value of the award may not exceed \$250,000 per  
16 year and the award may not cover a total time pe-  
17 riod of more than 2 years.

18 “(2) REVIEW.—The Commission shall periodi-  
19 cally review the amount in paragraph (1) and adjust  
20 it as necessary to reflect inflation.

21 “(h) COMMISSION REVIEW.—If a party to an arbitra-  
22 tion proceeding under this section appeals an arbitrator’s  
23 decision to the Commission, the Commission may review  
24 the decision under this section to determine if—

1 “(1) the decision is consistent with this part as  
2 applied by the Commission; or

3 “(2) if the award limitation in subsection (g) is  
4 complied with.”.

5 (b) CLERICAL AMENDMENT.—The analysis at the be-  
6 ginning of such chapter is amended by adding at the end  
7 the following new item:

“40504. Arbitration of disputes regarding common carrier services.”.

8 **SEC. 18. CLERICAL AMENDMENTS RELATING TO CON-**  
9 **TROLLED CARRIERS.**

10 Chapter 407 is amended—

11 (1) by striking the heading for section 40701  
12 and inserting the following:

13 **“§ 40701. Controlled carrier rates”;**

14 (2) by striking the heading for section 40702  
15 and inserting the following:

16 **“§ 40702. Controlled carrier rate standards”;**

17 (3) by striking the heading for section 40703  
18 and inserting the following:

19 **“§ 40703. Effective date of controlled carrier rates”;**

20 and

21 (4) in the analysis at the beginning of the chap-  
22 ter, by striking the items relating to sections 40701,  
23 40702, and 40703 and inserting the following:

“40701. Controlled carrier rates.

“40702. Controlled carrier rate standards.

“40703. Effective date of controlled carrier rates.”.



1 **SEC. 19. COMMISSION REVIEW OF RATES, CHARGES, ETC.:**  
2 **INVESTIGATION AND CIVIL PENALTIES OF**  
3 **CONTROLLED CARRIERS.**

4 Section 40704 is amended—

5 (1) in subsection (b), by adding at the end the  
6 following “In making this determination, the Com-  
7 mission may investigate any relevant conduct under  
8 sections 41302 to 41304 of this title.”; and

9 (2) by adding at the end the following new sub-  
10 section:

11 “(f) CIVIL PENALTIES.—In addition to any action  
12 authorized under this section with respect to a rate,  
13 charge, classification, rule, or regulation the Commission  
14 determines to be unjust or unreasonable, the Commission  
15 may assess civil penalties under section 41109.”.

16 **SEC. 20. OCEAN TRANSPORTATION INTERMEDIARIES: PRO-**  
17 **HIBITION ON ADVERTISING.**

18 Section 40901(a) is amended in the first sentence by  
19 inserting “advertise, hold oneself out, or” after “may  
20 not”.

21 **SEC. 21. OCEAN TRANSPORTATION INTERMEDIARIES: FI-**  
22 **NANCIAL RESPONSIBILITY AND RESIDENT**  
23 **AGENTS.**

24 Section 40902 is amended—

25 (1) in subsection (a), by inserting “advertise,  
26 hold oneself out, or” after “may not”; and

1           (2) in subsection (d), by inserting before the pe-  
 2           riod the following: “, and Commission requests or  
 3           demands for records or reports”.

4 **SEC. 22. OCEAN TRANSPORTATION INTERMEDIARIES: SUS-**  
 5 **PENSION OR REVOCATION OF LICENSE FOR**  
 6 **FAILURE TO COMPLY WITH COMMISSION RE-**  
 7 **QUESTS.**

8           Section 40903(a) is amended by striking “or” after  
 9           the semicolon at the end of paragraph (1), striking the  
 10          period at the end of paragraph (2) and inserting “; or”  
 11          and by adding at the end the following new paragraph:

12           “(3) failed to comply with a Commission sub-  
 13          poena or request for records.”.

14 **SEC. 23. REPEAL OF PROHIBITIONS OF CERTAIN PAY-**  
 15 **MENTS.**

16          Section 40904(d) is amended by striking so much as  
 17          precedes “limit the payment of compensation” and insert-  
 18          ing the following:

19          “(d) PROHIBITION ON LIMITING PAYMENT OF COM-  
 20          PENSATION TO AN OCEAN FREIGHT FORWARDER.—An  
 21          ocean common carrier may not”.

22 **SEC. 24. REPEAL OF DEFINITION OF JOINT VENTURE AND**  
 23 **CONSORTIUM.**

24          (a) REPEAL.—Section 41101 is repealed.

1 (b) CLERICAL AMENDMENT.—The analysis at the be-  
2 ginning of chapter 411 is amended by striking the item  
3 relating to such section.

4 **SEC. 25. REPEAL OF AUTHORITIES TO DISCLOSURE OF IN-**  
5 **FORMATION.**

6 Section 41103 is amended—

7 (1) in subsection (b), by adding “or” after the  
8 semicolon at the end of paragraph (1), striking “;  
9 or” at the end of paragraph (2) and inserting a pe-  
10 riod, and striking paragraph (3); and

11 (2) by striking subsection (c).

12 **SEC. 26. ADDITIONAL PROHIBITIONS OF CERTAIN ACTIONS**  
13 **BY COMMON CARRIERS.**

14 (a) IN GENERAL.—Section 41104 is amended—

15 (1) by redesignating paragraphs (3) through  
16 (12) as paragraphs (4) through (13);

17 (2) by inserting after paragraph (2) the fol-  
18 lowing new paragraph:

19 “(3) refuse or threaten to refuse cargo space  
20 accommodations when available;”;

21 (3) in paragraph (4), as so redesignated, by  
22 striking “refusing, or threatening to refuse, cargo  
23 space accommodations when available, or resort to  
24 other”;

1           (4) by striking “or” after the semicolon at the  
2           end of paragraph (12), as so redesignated;

3           (5) in paragraph (13), as so redesignated, by  
4           striking the period and inserting a semicolon; and

5           (6) by adding at the end the following new  
6           paragraphs:

7           “(13) discriminate against a shipper or ocean  
8           transportation intermediary for supplying their own  
9           equipment;

10          “(14) engage in an unfair or deceptive practice  
11          or an unfair method of competition in ocean trans-  
12          portation or the sale of ocean transportation;

13          “(15) engage in deceptive or fraudulent prac-  
14          tices including unreasonable failure to provide trans-  
15          portation services as agreed to in the contract;

16          “(16) take any action that may have the effect  
17          of unreasonably and substantially lessening competi-  
18          tion in a trade;

19          “(17) discriminate against a shipper on the  
20          basis of nationality or association with another com-  
21          mon carrier;

22          “(18) refuse to deliver or release a shipment, if  
23          such refusal is based on debts, claims, or amounts  
24          owed that are unrelated to a debt, claim, or amount  
25          owed by that shipper; or

1 “(19) impose a surcharge that is unreasonable  
 2 or does not comply with the requirements of this  
 3 part.”.

4 (b) CONFORMING AMENDMENTS.—Section 41305 is  
 5 amended—

6 (1) in subsection (c), by striking “41103(3) or  
 7 (6)” and inserting “41103 (4) or (7)”; and

8 (2) in subsection (d), by striking  
 9 “41104(4)(4)(A)” and inserting “41104(5)(A)”.

10 **SEC. 27. CONCERTED ACTION.**

11 Section 41105 is amended—

12 (1) in the matter preceding paragraph (1), by  
 13 striking “conference or”;

14 (2) in paragraph (3), by striking “of a common  
 15 carrier not a member of the conference, a group of  
 16 common carriers” and inserting “of a common car-  
 17 rier”;

18 (3) in paragraph (4), by striking “conference,  
 19 joint venture,” and inserting “joint venture”; and

20 (4) in paragraph (6), by—

21 (A) striking “that are parties to the agree-  
 22 ment”; and

23 (B) striking “that is a party to the agree-  
 24 ment”.

1 **SEC. 28. MONETARY PENALTIES.**

2 Section 41107(a) is amended by—

3 (1) striking “\$5,000” and inserting “\$25,000”;

4 and

5 (2) striking “, \$25,000” and inserting

6 “\$75,000”.

7 **SEC. 29. ADDITIONAL PENALTIES.**

8 Section 41108 is amended—

9 (1) in subsection (a), by striking “, or that  
10 common carrier’s right to use any or all tariffs of  
11 conferences of which it is a member,”; and

12 (2) in subsection (c)(1)(A), by striking “or the  
13 carrier’s right to use any or all tariffs of conferences  
14 of which it is a member”.

15 **SEC. 30. OCEAN TRANSPORTATION PRACTICES STUDY.**

16 (a) STUDY.—Within 180 days after the date of enact-  
17 ment of this Act, the Federal Maritime Commission shall  
18 initiate a study of ocean transportation practices, includ-  
19 ing delay of cargo, surcharges, penalties, demurrage, ac-  
20 cessorial charges, and availability of containers for exports  
21 from the United States. In conducting the study, the Com-  
22 mission shall provide public notice and opportunity for  
23 comment and conduct one or more public hearings.

24 (b) REPORT TO CONGRESS.—Within 180 days after  
25 completion of the study, the Commission shall provide a  
26 report on its findings to the Committee on Commerce,

- 1 Science, and Transportation of the Senate and the Com-
- 2 mittee on Transportation and Infrastructure of the House
- 3 of Representatives.

